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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 9th December 2014

No. 10077—li/1-(J)1/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th October 2014 in Industrial Dispute Case No. 05/2008 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of M/s Ladas-size, Agriculture Multipurpose Co-operative Society Ltd., Gunupur, At/P.O. Gunupur, Dist. Rayagada & its Workman Shri Trinath Panda was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF PRESIDING OFFICER, LABOUR COURT

JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 5/2008

Dated the 30th October 2014

Under Section : 10 & 12 of the Industrial Disputes Act, 1947.

Present :

Shri Debasis Rout, O.S.J.S.(Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Management of M/s Ladas-size Agriculture Multipurpose Co-operative Society Ltd., Gunupur, At/P.O. Gunupur, Dist. Rayagada.	..	First Party—Management
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Vrs.

Its Workman Shri Trinath Panda, Old Gunupur, At/P.O. Gunupur, Dist. Rayagada.	..	Second Party—Workman
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Appearances :

Shri K. N. Samantaray Advocate, Jeypore	..	For the First Party—Management
Shri S. Padhi, Advocate, Jeypore.	..	For the Second Party—Workman
Date of Argument	..	27-10-2014
Date of Award	..	30-10-2014

AWARD

The matter arises out of a reference made by the State Government in the Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5), read with Section 10 (1) of the Industrial Disputes Act, 1947 vide Memo No. 4562(5) L. E., dated the 16th April 2008 for adjudication of following dispute:—

SCHEDULE

"Whether the action of the Management of M/s Gunupur LAMPS Ltd., Gunupur, Dist. Rayagada in dismissing Shri Trinath Panda from service with effect from the 5th July 2006 is legal and / or justified, If not, what relief Shri Panda is entitled to?"

2. The case of the workman/ second party as per statement of claim filed by him is that, he entered into service of first party management in the year 1986. He had to avail medical leave from the 9th November 1999 to 22nd February 2001 and also submitted Medical Certificate with his joining report on the 23rd February 2001 but no pay was paid to him. At the time of appointment he was Branch Incharge, Gunupur LAMPS on consolidated pay of Rs. 2100. He further pleaded that he was put under non-penal suspension which was drawn on the 18th October 2003. The proceedings were finalised on the 15th January 2004 after enquiry was taken up on the 21st October 2005 without his participation. No witnesses were examined nor any documents produced nor even secondary evidence were taken, and the copy of the enquiry report was furnished all these were in violation of natural justice. The dismissal order was with retrospective effect from 5th July 2006 and the amount of misappropriation was said to be Rs. 1,18,047. The management illegally dismissed him from his service without holding domestic enquiry. The management is entitled to adduce evidence before the Court justifying its action or alternatively and without prejudice to its plea that the enquiry is proper and binding. Neither the enquiry report was provided as soon as enquiry was conducted report completed along with deposition of witnesses, if any, and documents produced in connection with the enquiry and show cause notices were also not issued as to the punishment proposed in accordance with service rules. The copy of resolution, orders and other particulars were also not furnished to him. Therefore, the second party workman praying for quashing the dismissal order and reinstated him with full back wages, etc.

3. The first party management filed the W.S. and has stated that, the first party is a Co-operative organisation registered under the Odisha Co-operative Societies Act, 1961 in the name and style of M/s Gunupur LAMPS. Ltd., which is constituted to help the poor farmers without consideration of religion, caste or creed, therefore the said Co-operative Society is not an Industry. The second party workman was appointed on the 25th July 1987 with a consolidated salary of Rs.250 per month and his service was regularised from April 1992. The second party workman was drawing Rs. 2100 per month at the time of dismissal and duty was supervising an independent nature and as such he is not coming under definition of the workman U/s 2(s) of the I. D. Act. The second party workman was suspended vide Order No. 168, dated the 18th October 2003 due to

disobedience of order and misappropriation of society funds and the workman was called upon to explain the charges prior to framing of charges. The disciplinary proceeding was drawn up against the second party and enquiry was conducted and the enquiry report was submitted by the enquiry officer and as per the said enquiry report an amount of Rs.1,66,660.30ps. had been misappropriated by the second party workman and the enquiry report was received by him vide memo No.3006, dated the 2nd December 2005 with show cause but the workman did not deposit the misappropriation amount. The report was placed before the Board of Management on the 12th June 2006 due to non-filing of the show cause and not deposited the misappropriation of amount, the second party workman was dismissed from service with effect from the 5th July 2006 and first party management send the said order to the workman, second party which was returned back with postal remark that addressee was absent for which it was published in daily newspaper. The workman second party had dismissed from the service after proper enquiry and decision taken by the Board of Management which is legal, binding and justified. The first party management dismissed the second party workman from his service due to his misconduct and for that he is not entitled to continue in service and the schedule of statement of claim of Rs. 1,91,020 is not justified against the management i.e. first party. Therefore the reference may be dismissed.

On the aforesaid pleadings of the parties the following issue were framed for determination :—

ISSUES

(i) "Whether the action of the Management of M/s Gunupur LAMPS Ltd., Gunupur, Dist. Rayagada in dismissing Shri Trinath Panda from service with effect from the 5th July 2006 is legal and / or justified?

(ii) If not, to what relief Shri Panda is entitled ?"

5. In order to prove its case, the second party workman examined himself as W.W. No.1 and has relied on 6(six) documents marked as Exts. 1 to 6. On the other hand, the first party management examined one witness Shri Prafulla Chandra Sadangi as M.W. No. 1 and has exhibited 13 documents marked as Exts.A to N in support of its case.

FINDINGS

6. *Issue No.(i) & (ii)*—Both the issues are taken up together for the sake of convenience. In his sworn deposition, the workman (W.W.No.1) corroborated the averments of the statement of claim filed by him and has stated that, he worked as Branch incharge of Gunupur LAMPS Ltd., from 1992 and he has been dismissed by the first party management with effect from the 5th July 2006. He further stated that, the disciplinary proceedings were drawn up on the 15th January 2004 after suspending him from duty on the 18th October 2003. In the domestic enquiry he was not given any opportunity to put forth his case and no records were supplied to him and no witnessess were produced by the prosecution so also no documentary evidence was produced or exhibited to corroborate its own evidence. It is also the evidence of the workman that, the charges against him were false, fabricated, imaginative and pervasive. In support of his contention, the workman produced the relevant documents such as, the copy of L. No.1917, dated the 18th August 2007 of A. L. O., Gunupur (Ext. 1), copy of the compliant petition, dated the 12th April 2005 marked as Ext.2, copy of L. No. 90, dated the 12th July 2005 of M. D., Gunupur LAMPS (Ext. 3), copy of the Daily Sambad, dated the 29th July 2006 (Ext.4), copy of memo No. 584, dated the 18th March 2009 (Ext.5) and copy of L. No. 287, dated the 27th January 2009 of Asst. Auditor General of Co-operative Society, Jeyapore marked as Ext.6

7. The M.W. No.1 who happened to be the Managing Director of Gunupur LAMPS Ltd., in his evidence he has stated that, the establishment of the first party management is the Co-operative Organisation registered under the Odisha Co-operative Society Act, which is not an Industry. He further stated that, the 2nd party workman was suspended vide Order No.168, dated the 18th October 2003 due to disobedience of order and misappropriation of society funds. And accordingly, the disciplinary proceeding was drawn up against him vide Order No.252, dated the 15th January 2004. In support of his contention he produced copy of the Order No. 168, dated the 18th October 2003 of the Gunupur LAMPS Ltd., vide Ext. A and disciplinary proceeding vide Order No. 252, dated the 15th January 2004 vide Ext. B, along with acknowledgement (Ext. B/1). He further stated that the Enquiry Officer Shri Nageswar Rao conducted the enquiry and as per the enquiry report an amount of Rs. 1,66,660.30ps had been misappropriated by the second party workman and the Enquiry Officer submitted the enquiry report dated the 24th November 2005 vide Ext.D and the said enquiry report along with show cause notice vide L. No. 56, dated the 6th May 2006 was received by the second party on 8th May 2006 and another letter vide L. No. 58, dated the 6th May 2006 sent to the second party for recovery of misappropriate loan amount and same was acknowledged by the second party workman. He also produced the resolution, dated the 15th January 2005 along with proceeding (Ext.C), another resolution dated the 24th February 2006 (Ext.E), L. No. 56, dated the 6th May 2006 of the O. P. (Ext.F) and L. No. 58, dated the 6th May 2006 of the O. P. (Ext.G). He further stated that the second party workman was silent on his reply to the show cause dated the 6th May 2006 and not deposited the due recovery amount and the first party informed the matter to the S. P. Vigilance vide L. No. 89, dated the 30th May 2006 vide Ext. J and issued another letter vide L. No. 103, dated the 1st June 2006 to the second party workman regarding personal appearance before the Board of Management vide Ext. K. He further stated that after receipt of the letter dated the 1st June 2006, the second party did not appear before the Board of Management and did not turn up after repeated reminders for which the first party dismissed the service of the second party with effect from the 5th July 2006 as per Resolution No. 4, dated the 12th June 2006 and also intimated the fact vide L. No. 154, dated the 15th July 2006 through Registered Post with A/D. He also produced copy of the resolution dated the 12th June 2006 vide Ext. L and copy of the L. No. 154, dated the 5th July 2006 vide Ext. M. It is also evidence of M. W. No. 1 that the said letter return back with postal endorsement that addressee refused to accept to take delivery of the said letter vide Ext.M/1 for which the dismissal order was published in the daily newspaper vide Ext.N. He further stated that the workman second party has been dismissed from the service after proper enquiry and decision taken by the Board of Management which is legal and justified and the second party is not entitled to any reinstatement with back wages.

8. During course of hearing the learned counsel appearing for the second party workman contended that, the Gunupur LAMPS Ltd., is an Industry and the second party workman is the workman as per the definition U/s 2(s) of the I. D. Act and the dispute raised by the second party workman was admitted as *prima facie* case of illegal dismissal from service with effect from the 5th July 2006. He further contended that the first party management framed disciplinary charges against the workman like misappropriation of money, falsification, non-accountal of money and disobedience of orders but no evidence has been adduced by any one to prove about the facts. He further contended that, second party was not supplied the copies of proceedings of the enquiry. The misappropriation of money has been reported to the State Vigilance and to the DRCS, Jeypore Division but the result of such reference has not been awaited and in such circumstances institution of domestic enquiry and dismissing the second party is unjustified and illegal. It is also

contended by him that there has been violation of procedures in the enquiry, consequential failure of natural justice and the findings of the Enquiry Officer, and accordingly the decisions of the disciplinary authority is perverse on account of lack of evidence. In absence of proper enquiry and required evidence to prove the charges against the second party workman, the total enquiry was vitiated in the eye of law.

9. The learned counsel appearing for the 1st party management contended that the Gunupur LAMPS Ltd. is a Co-operative Organisation which constituted to help the poor farmers without consideration of religion, caste or creed, therefore the said Co-operative Society is not an Industry U/s 2(j) of I. D. Act. Relied on decision in Management of SCM Vihar Apartment Owners Housing maintenance Society Ltd., and Workman, C/o Indian Engineering and General Mazdoor, 2001 Vol.I LLJ-1413. The Management of State Farms Corporation of India Ltd., Melchengam, West Post Melpalli Pattu and the Presiding Officer, second Addl.Court, Madras and others 1997. VI-I, LLJ page 20. He further contended that the second party was drawing Rs.2100 p.m. at the time of dismissal whose duty was supervising and independent in nature and for that he is not a workman. In support of his contention he relied on decision reported in 2001 Vol.I-LLJ page 927, 2006 Vol.III, LLJ-767, 2006 Vol.I-LLJ, page 378, 2003 Vol.IV-LLJ-740, 1994-L.I.C. 1471 and 1988-Vol.II-LLJ-49. He further contended the second party workman was discharged his duty as Branch In charge which is Supervisory in nature and as such his duties and functions were mainly Managerial so he is not a workman u/s 2(s) of the I. D. Act.

He further submitted that the second party was suspended due to disobedience of order and misappropriation of Society funds and accordingly disciplinary proceeding was initiated against him and enquiry was conducted. The second party neither deposited the misappropriation of amount nor given any show cause reply for which he was dismissed from his service. It is also submitted by him that, the Schedule of Statement of claim of Rs. 1,91,020 is not justified against the first party is and he is not entitled for any relief.

10. On the contention urged, the following question arises for consideration is as to whether the dismissal order of the second party workman is illegal and unjustified.

11. Be that as it may, the evidence adduced by the second party workman, the Gunupur LAMPS Ltd., is an Industry following within the definition u/s 2(j) of the I. D. Act and the second party was workman and as such the dispute has been referred for adjudication. On the other hand the first party management stated that, the Gunupur LAMPS Ltd., is a Co-operative Organisation and its activities with non-profit motives but to provide the promotion of welfare of the weaker farmers and it deals with business for providing agricultural loans, fertilizers, pesticides and consumers business of essential and controlled commodities marketing of agricultural products, etc. Therefore the said Organisation is not an Industry. In support of its contention the first party management relied on decision as noted above. It may be noted that as per submission of the first party, the Gunupur LAMPS Ltd. deals with business for providing agricultural loans to its members and marketing of agricultural products. Therefore, it cannot be said that the Gunupur LAMPS Ltd. is not an Industry. The plea of the first party management is that the second party is not a workman as per Sec.2(s) of the I. D. Act, as he was discharged his duty as Branch In Charge which is the independence and Supervisory in nature, but no material whatever adduced or has been adduced by the first party to show that the second party was in fact, discharging the duties in the Managerial or Supervisory capacity. Therefore, the second party was a workman of the first party management.

Therefore the submission made by learned counsel for the first party management regarding Industry as well as workman is not acceptable. Therefore, it can be said that there was relation between them as employer and workman at the time of dismissal.

12. As has been stated earlier that the second party workman was working under the first party management with effect from the 25th July 1987 and was worked as Branch In Charge of Gunupur LAMPS Ltd. due to disobedience of Order, misappropriation of Society funds, the Departmental Proceedings were initiated against the second party workman and accordingly the enquiry was conducted and after completion of enquiry, the second party workman was dismissed from service by the first party with effect from the 5th July 2006 due to misappropriation of Society funds, negligence in duty, disobedience of Order and carelessness of nature. The second party workman challenged the dismissal order mainly on the ground that he was not given any opportunity to put forth his case and no documentary evidence nor witnessess produced by the first party management and the enquiry was not properly conducted by the Enquiry Officer. On the contrary the first party management contended that after conducting proper enquiry, the Enquiry Officer submitted the enquiry report and after receipt of show cause notice, the second party workman did not turn-up. Accordingly, the second party was dismissed from service. Therefore, the question arises for consideration is as to whether dismissal of the second party workman was proceeded by a proper enquiry which was held in accordance with the law. Thus, the initial burden lies on the first party management to prove that there is a *prima facie* case for such dismissal.

13. The evidence adduced by the first party management showing that the second party workman was suspended as per Order No. 168, dated the 18th October 2003 (Ext.A) showing that the first party management issued order for suspension of the second party workman due to disobedience of order and misappropriation of Society funds. It would be reveal from the copy of the disciplinary proceeding vide Order No. 252, dated the 15th January 2004 (Ext.B) that the first party management initiated disciplinary proceeding against the delinquent second party workman by framing charges and also called upon the explanation from him. The first party management also produced the resolution dated the 15th January 2005 and another resolution dated the 24th February 2006 marked as Ext. C & E respectively, indicate about discussion of dismissal of second party and another by the management. Basing on the disciplinary proceeding the Enquiry Officer conducted enquiry and submitted the enquiry report on dated the 24th November 2005 vide Ext. D reveals that Shri K. Nageswar Rao, conducted enquiry on dated the 9th May 2005, 28th June 2005, 13th July 2005, 22nd July 2005, 29th August 2005 and 21st October 2005 in presence of the then M. D., Gunupur LAMPS Ltd. and the second party workman delinquent basing on charges framed against him, during course of enquiry the delinquent workman stated about the matter before the Enquiry Officer and he could not submit the reply to the charge due to non-receipt of require documents. The M. D. also produced the counter. The Ext. D further discloses that the 4 loanee members deposed before the Enquiry Officer, he had misappropriated Rs. 1,18,047. Shri Panda was found guilty of charges for which he may be imposed the punishment. From the enquiry report (Ext. D) it is very much clear that the Enquiry Officer made on finding basing on the written deposition of the loanee members regarding misappropriation of money and he also imposed punishment. It is to be further noticed that during course of hearing the first party management neither examined witnessess nor produced the relevant documents basing on which the Enquiry Officer conducted the enquiry and submitted the enquiry report. As already stated that the disciplinary proceeding was drawn up against the second party workman and charges were framed vide Ext. B showing that the first party management framed charges against the second party workman, i.e. misappropriation of

Society funds, negligence in duties, disobedience of order and carelessness of nature shown to the authority. The charge sheet has not been properly framed and the same is not specific and clear. The said charge sheet does not disclose the relevant Section of the Standing Orders under which the misconduct falls. The first party management contended that the show cause notice was issued to the second party in different dates to give his explanation and deposit the misappropriated amount but he did not appear before the Board of Management and the management taken a decision of Board of Director meeting vide Resolution No. 4, dated the 12th June 2006, vide Ext. L and dismissed the second party workman with effect from the 5th July 2006 by intimating the said fact through the Register Post with A/D. As noted above, the second party workman challenged his dismissal Order as the enquiry was not properly conducted and he was not given any opportunity to put forth his case and proper charge had not been served on him and as such findings recorded by the Enquiry Officer are perverse. Therefore he claimed for reinstatement with full back wages.

14. In the present case an Industrial Dispute is raised on the ground of dismissal of the second party workman and it is referred for adjudication in order to find out the dismissal order is legal or justified. As already discussed that the management initiated departmental proceeding against the second party workman and also conducted Departmental Enquiry and basing on the enquiry report submitted by the Enquiry Officer, the second party workman was dismissed from his service. Therefore, the management has to satisfied that, there is a *prima facie* case for such dismissal and he has hold the proper enquiry into the alleged misconduct of the second party workman before his dismissal. It is the first and foremost duty of the first party management/Enquiry Officer to conduct the enquiry basing on the principle of domestic enquiry by observing Rule of Natural Justice by giving sufficient opportunity to the workman during course of enquiry. An enquiry must be conducted with the supply of a specific charge sheet to the workman which should be clear and never vague. As already stated during course of hearing the first party management neither examined any witnesses nor produced the documents basing on which the Enquiry Officer conducted the enquiry and giving his findings. On the other hand charge has not been properly framed against him. There is no material to show that the workman was given opportunity at the time of examination of the witnesses and documents before the Enquiry Officer. On the other hand, the Enquiry Officer submitted the enquiry report by suggesting punishment. It is further noticed that there is no material to show that the copy of the findings of the Enquiry Officer was forwarded by the management to the workman to submit his comments. In view of the aforesaid discussion it is very much clear that the departmental enquiry conducted by the employer is not fair and the charges are not specific and clear and that full opportunity had not been given to the second party workman to meet the charge. Thus the dismissal of the second party workman is not legal and justified. The law is well settled that if the enquiry is held to be unfair the employer can lead evidence before the Tribunal and justify his action, but in such case the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee (1963) II-LLJ-452, (S. C.).

15. The second party workman was working under the first party management during the period of his service, due to misconduct he was dismissed from the service by the management. As the enquiry has not been properly conducted by the management. In the case at hand the second party workman praying for reinstatement with full back wages. Therefore the question arises for consideration as to whether the said workman is entitled for reinstatement with full back wages. The law is well settled that the relief of reinstatement with full back wages should not be

granted automatically only because it would be lawful to do so. Grant of relief would depend on the facts situation obtaining in each case. It will depend upon several factors. Be that as it may, the first party management initiated departmental proceeding against the second party workman due to disobedience of order and misappropriation of Society funds and accordingly, the Enquiry Officer conducted enquiry and found him guilty of charges framed against him and the enquiry report discloses about misappropriation of Society funds by the workman. Even though the first party management has failed to prove its case against the workman as the enquiry has not been conducted properly. It is to be further noticed that the second party workman held the post of Office in Charge of Gunupur LAMPS Ltd. a position of confidence and trust. It is settled proposition of law that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workman should be granted adequate monetary compensation.

16. In the light of the above legal position and having regard to the facts and circumstances of the case I am of opinion that the second party workman is entitled for compensation instead of reinstatement with back wages and it cannot be said to be unreasonable or perverse in the present case. Therefore, granting of compensation will meet the ends of justice if it is ordered for payment of compensation in lieu of reinstatement with back wages.

17. Thus the reference is answered on contest against the first party management without cost and accordingly the action of the management of M/s Gunupur LAMPS, Ltd., Gunupur, Dist. Rayagada in dismissing Shri Trinath Panda from service with effect from the 5th July 2006 is held illegal and unjustified. In view of the above, the second party workman Shri Trinath Panda is entitled to get the compensation in the sum of Rs. 75,000 (Rupees seventy-five thousand) only.

The reference is disposed of accordingly.

Dictated and corrected by me.

DEBASIS ROUT
30-10-2014
Presiding Officer
Labour Court,
Jeypore.

DEBASIS ROUT
30-10-2014
Presiding Officer
Labour Court,
Jeypore.

By order of the Governor
M. NAYAK
Under-Secretary to Government